

VZCZCXRO0430
PP RUEH DU RUEHMR RUEHRN
DE RUEHSA #1689/01 2131527
ZNY CCCCC ZZH
P 311527Z JUL 08
FM AMEMBASSY PRETORIA
TO RUEHC/SECSTATE WASHDC PRIORITY 5280
INFO RUCNSAD/SOUTHERN AF DEVELOPMENT COMMUNITY COLLECTIVE PRIORITY
RUEHTN/AMCONSUL CAPE TOWN PRIORITY 5873
RUEH DU/AMCONSUL DURBAN PRIORITY 0043
RUEAIIA/CIA WASHINGTON DC PRIORITY
RHEFDIA/DIA WASHINGTON DC PRIORITY
RHEHNSC/NSC WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 PRETORIA 001689

SIPDIS

PASS TO AF/S

E.O. 12958: DECL: 07/31/2018

TAGS: [PGOV](#) [KJUS](#) [SF](#)

SUBJECT: ANC PRESIDENT SUFFERS ANOTHER LEGAL SETBACK

PRETORIA 00001689 001.2 OF 002

Classified By: Acting Deputy Chief of Mission Raymond L. Brown. Reason
s 1.4(b) and (d).

11. (U) On 31 July, the South African Constitutional Court upheld a Supreme Court of Appeal decision and ruled against ANC President Jacob Zuma (and arms manufacturer and co-conspirator Thint) in his attempt to stop seized evidence from being used against him in his upcoming corruption trial. Nine of ten judges agreed that the search warrants used in raids at Zuma's and his lawyer's properties were valid, paving the way for the State to use the evidence against Zuma who is accused of corruption, tax evasion, and racketeering. Zuma's lawyers had argued that the search warrants were incomplete, overbroad, and vague and that his rights to privacy and lawyer client privilege were not protected. The ConCourt also unanimously declared that the State's request to Mauritian authorities to send them allegedly incriminating documents was lawful, delivering another legal blow to Zuma. (NOTE: The Constitutional Court also formally lodged a complaint today against Judge Hlophe who is accused of trying to influence two Constitutional Court judges regarding the Zuma case (septel). END NOTE)

12. (U) For now, reactions to the court's decision have been mixed but muted. Zuma publicly said on 30 July that he was "more than ready to defend himself and prove his innocence." The ANC issued a statement saying they "respect the ruling of the Constitutional Court's decision" but "the ANC reiterates its view that the manner in which this case has been handled by the authorities in the first few years has reinforced the perception that the ANC President is being persecuted rather than merely prosecuted...fueling doubts about his chances of a fair hearing." The ANC's executive bodies -- both the ANC National Executive Committee and National Working Committee -- on 29 July said that ANC members would travel to Pietermaritzburg on 4 August to support Zuma. They will communicate the following messages (not of which proclaim Zuma is innocent):

- ANC will strive to uphold and defend the integrity and credibility of judiciary;
- Zuma has had his rights repeatedly violated by institutions of the state;
- The fact that the scope of the charges has been broadened gives weight to view that Zuma is being persecuted;
- Zuma has been the subject of a vicious and unrelenting trial by media, having already been found guilty before his case begins;
- The manner in which the case has been handled reinforces the perception that this is a political trial and that he will not receive a fair hearing.

Alliance partners SACP secretary-general Blade Nzimande also said he was not surprised by the decision and that the case will go down in history as the first political trial in the post-apartheid era.

13. (C) On 4-5 August, Judge Nicolson will hear Zuma's application in the Pietermaritzburg High Court to have the decision to prosecute him declared unlawful. Steve Tuson, University of Wits law professor and frequent commentator on the Zuma case, believes that Zuma is unlikely to win such "an unprecedented case." He added that it is presumptuous of the ANC or any of Zuma's public defenders to say that the charges are unfair when they have not seen the evidence or read the judgments (sent to AF/S) which specifically spell out that a trial court needs to listen to the merits of the case and then decide. He also said he does not believe Zuma's argument essentially violates the separation of powers by telling the court who it can and cannot prosecute. Press reports note that should Nicolson dismiss Zuma's application, he may also preside over Zuma's corruption trial.

14. (C) COMMENT: Today's ruling has been one in a long series of lost appeals on Zuma's behalf. With the seizure of evidence against him and the State's request for allegedly damning evidence in Mauritius being declared lawful in the country's highest court, Zuma appears to have only one chance left of stopping his corruption trial from starting. Zuma has said he is more than willing to defend himself, yet has pulled out every legal stop to prevent this from happening. The ANC and alliance partners may sabre-rattle all they want, but it appears for now that the judicial system is taking its duties to uphold the law apart from politics seriously. END COMMENT.

PRETORIA 00001689 002.2 OF 002

BOST